

## REMARKS

In response to the action of July 23, 2009, applicants ask that all claims be allowed in view of the amendments to the claims and the following remarks. Claims 1, 38-49 and 52-62 are currently pending, of which claims 1, 52, and 53 are independent. Claims 1, 52, and 53 have been amended and claims 61 and 62 have been added.

### Interview Summary

Initially, Applicants' undersigned representative thanks Examiner Dunham for the courtesies extended during the personal interview conducted on August 12, 2009. During the interview, Examiner Dunham and Applicants' representative discussed amended independent claim 1 with respect to the cited references. Examiner Dunham indicated that the amendments to independent claim 1 would appear to advance prosecution. This reply reflects the substance of the interview.

### § 103 Rejections

Claims 1, 38, 40-43, 45-49, 52-54 and 56-60 have been rejected as being unpatentable over Jin (U.S. Publication No. 2005/0033648) in view of Zeidman (U.S. Publication No. 2006/0190352) and claims 39, 44 and 55 have been rejected as being unpatentable over Jin in view of Zeidman and Hommrich (U.S. Publication No. 2002/018042). Based on the following remarks and the discussion in the personal interview of August 12, 2009, withdrawal of the rejections and further examination are respectfully requested.

Referring to particular claim language, independent claim 1, as amended, recites a method comprising, *inter alia*, using calculated metrics and historical transaction data to generate, by a third party facilitator, a recommendation for improving performance of a transaction, the recommendation suggesting that a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction.

Independent claims 52 and 53, although different in scope from claim 1 and each other, recite features similar to those discussed above with respect to claim 1.

The applied references are not seen to disclose, teach or suggest the foregoing features recited by the independent claims. In particular, the Office Action appears to rely on Zeidman for features related to using calculated metrics and historical transaction data to generate a recommendation by indicating that “Jin ... does not expressly disclose using the calculated metrics and historical transaction data to generate, by the third party facilitator, a recommendation for improving the performance of the transaction, the recommendation suggesting ... a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction.” Office Action of July 23, 2009 at page 3. Zeidman, however, is not seen to disclose using calculated metrics and historical transaction data to generate, by a third party facilitator, a recommendation for improving performance of a transaction, the recommendation suggesting that a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction, as recited in amended independent claim 1.

Specifically, the Zeidman system allows a seller to optimize the way he or she sells an item by providing “a recommendation from the invention about the best way to sell the item.” Zeidman at Abstract. Although the Zeidman system provides a recommendation about the best way to sell an item, the Zeidman system does not use calculated metrics and historical transaction data to generate, by a third party facilitator, a recommendation for improving performance of a transaction, the recommendation suggesting that a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction. Rather, as shown in FIG. 10, the Zeidman system provides a recommendation for selling a particular product (e.g., an Apple MAC 128K) as specified by the seller. In providing the recommendation, the Zeidman system provides no recommendation that the quantity or type of items should be adjusted to different values. Thus, for at least these reasons, applicants respectfully request reconsideration and withdrawal of the rejection of amended independent claims 1, 52, and 53 and submit that amended independent claims 1, 52, and 53 are allowable.

The other rejected claims and new claims in the application are each dependent on these independent claims and are thus believed to be allowable over the applied references for at least

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047/01540-00/US

the same reasons. Because each claim is deemed to define additional aspects of the disclosure, however, the individual consideration of each claim on its own merits is respectfully requested.

### Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants submit that all claims are in condition for allowance. The fee in the amount of \$104.00 in payment of the excess claims fee is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: October 22, 2009

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